INTERIOR BOARD OF INDIAN APPEALS

Alturas Indian Rancheria v. Pacific Regional Director,
Bureau of Indian Affairs

54 IBIA 15 (08/05/2011)

Denying Reconsideration of:
53 IBIA 100

Related Board cases:
54 IBIA 138
54 IBIA 1
52 IBIA 7
51 IBIA 317

United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ALTURAS INDIAN RANCHERIA, Appellant,	)	Order Denying Motion for Reconsideration
v.	)	
	)	Docket No. IBIA 11-078-1
PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	August 5, 2011

On March 14, 2011, in this appeal by the "Rose Faction" of the Alturas Indian Rancheria (Tribe), the Board of Indian Appeals (Board) summarily vacated a March 4, 2011, letter (Decision) from the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA).[1] 53 IBIA 100. The Decision purported to "clarify" an October 22, 2010, decision of the Regional Director, which was then the subject of a pending appeal before the Board. The Board summarily vacated the Decision because the pending appeal from the October 22 decision had divested the Regional Director of jurisdiction over the matter.

On March 16, 2011, the Board received a Motion for Reconsideration from the Del Rosa Faction of the Tribe,[2] arguing that the October 22 decision consisted of separate and distinct holdings, and that the Board erred in vacating the Decision because it "clarified" a

[1] The "Rose Faction," consists of Darren Rose, Jennifer Chrisman, and Joseph Burrell. The appeal was filed in the name of the Tribe, and was captioned accordingly. Because the case involves a tribal government dispute, the Board's identification of the Tribe as the Appellant shall not be construed as expressing any view on the merits of the underlying dispute or on the authority of the Rose Faction to have filed the appeal on behalf of the Tribe. For additional background on the tribal dispute, *see Alturas Indian Rancheria v. Acting Pacific Regional Director*, 54 IBIA 1 (2011).

[2] The Del Rosa Faction, which also files its pleadings in the name of the Tribe, consists of Phillip Del Rosa, Wendy Del Rosa, Calvin Phelps, and Donald Packingham.

non-appealed holding.[3] The Del Rosa Faction argues that because no appeal was filed from the portion of the October 22 decision that was the subject of the Regional Director's "clarification," that portion of the October 22 decision became final for the Department of the Interior, was not subject to the Board's jurisdiction, and therefore was within the jurisdiction of the Regional Director. Thus, while the Del Rosa Faction does not take issue with the well-established principle that an appeal from a BIA decision automatically divests BIA of jurisdiction, and stays the effectiveness of that "decision" during the pendency of the appeal, *see* 25 C.F.R. § 2.6, 43 C.F.R. § 4.314, the Del Rosa Faction argues that the October 22 decision consisted of separate "holdings," each of which constituted a separate "decision" for purposes of the applicability — or non-applicability — of the automatic stay and determining the limits on BIA's jurisdiction.

We disagree. Whether or not the Regional Director's October 22 decision consisted of separate "holdings," it was a single decision within the meaning of the regulations, and thus when an appeal from that decision was filed with the Board, the entire decision became subject to the jurisdiction of the Board. Correspondingly, the Regional Director was divested of jurisdiction over the matter, including all components of the appealed decision. Allowing either BIA or interested parties to unilaterally compartmentalize a BIA decision into "separate and distinct" holdings, for purposes of compartmentalizing jurisdiction when an appeal is filed, would create the very uncertainty and confusion that the jurisdiction-in-one-place rule seeks to avoid, *see* 53 IBIA at 101, and would interfere with the Board's jurisdiction to review decisions in their entirety, even to the point of considering issues that were not before BIA, if warranted. *See* 43 C.F.R. § 4.318 (scope of review). It is for the Board — not individual parties or BIA — to decide whether individual components of a decision may be so distinct from issues raised on appeal that a portion of a BIA decision should be made final and effective while the appeal remains pending. The failure by a party to appeal a BIA decision, or to raise an issue on appeal, may have a preclusive effect against the party, but it does not limit the Board's *jurisdiction*. If BIA or another party to the appeal believes that a portion of a decision on appeal should be placed into effect, or that jurisdiction should be conferred upon BIA even while an appeal is pending, the proper course is to file a request with the Board.

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[3] The Board refrained from deciding the motion for reconsideration pending the outcome of settlement efforts directed by the U.S. District Court in *Alturas Indian Rancheria v. Salazar*, No. 2:10-cv-01997-LKK-EFB (E.D. Cal). Based on the most recent status reports to the Court, it appears that the tribal factions are at an impasse in their efforts to voluntarily resolve the dispute in a mutually acceptable manner.

The Board's decision today in the related appeal illustrates why the Del Rosa Faction's argument is untenable. In *Alturas Indian Rancheria*, 54 IBIA 1, which is also being decided today, we have concluded that the Regional Director's October 22 decision must be vacated and the matter remanded so that BIA may address apparent inconsistencies or gaps in that decision, which implicate both appealed and non-appealed portions of that decision.

We thus reject the Del Rosa Faction's argument that we erred in summarily vacating the Decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board denies the motion for reconsideration.[4]

I concur:

// original signed	// original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

[4] The Del Rosa Faction filed a request that a hearing be set to argue its motion for reconsideration. Although the Board has authority to hold oral argument, its exercise of that authority has been exceedingly rare, to the point of being almost nonexistent. The Board finds oral argument unnecessary to decide the motion for reconsideration.